



POLICE DEPARTMENT

May 11, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Christopher Willis  
Tax Registry No. 898775  
Auto Crime Division  
Disciplinary Case No. 2013-10825  
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The above-named member of the Department appeared before me on January 22, 2015, charged with the following:

1. Said Lieutenant Christopher Willis, on or about August 2, 2012, at approximately 1715 hours while assigned to the Auto Crimes Division and on duty in the vicinity of [REDACTED] Richmond County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he participated in the entry into the enclosed backyard of said location without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Heather Cook, Esq., and Respondent was represented by Michael LaCondi, Esq.

Respondent, through his counsel, entered a plea of not guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that Respondent was on duty, in plain clothes, on August 2, 2012, assigned as a supervisor in the Auto Crimes Division (ACD). That morning a LoJack device attached to a motorcycle that had previously been reported stolen sent out a GPS signal which was monitored by Detective Scott Davy and Detective Ferdinand Muniz and which indicated that the motorcycle was located at [REDACTED], Staten Island ([REDACTED]). Respondent responded to [REDACTED] along with Lieutenant Emanuel Dermitzakis and Sergeant Atanasie Curumi.

It is also not disputed that on August 2, 2012, Nadia Antoine was inside her house at [REDACTED] where she lives with her husband Person A and her daughter [REDACTED].

CCRB's Case

The CCRB prosecutor called Nadia Antoine as its sole witness and offered the out-of-court statement of Detective Scott Davy.

Nadia Antoine

Antoine testified that while she was on the phone speaking with her husband she looked out her kitchen window, which is on the driveway side of her house, and saw three men in civilian clothes walking down her driveway. Antoine came out the rear door of the house onto her back porch and observed that one of the men appeared to be peeking inside her garage and another was walking on her grass. When Antoine asked the men who they were and what they were doing, a tall man wearing a white polo T-shirt [who was stipulated to be Respondent] who

was in her driveway approached her and told her that he was there because he was looking for a motorcycle. Respondent explained to her that a LoJack signal had indicated that a motorcycle was inside her garage. Respondent asked her if he could look inside her garage and her basement. She told him no. Respondent said he would get a warrant and that if she changed her mind she should call him. He then wrote his name and phone number on an envelope which he handed to her. Respondent and the other officers then walked back down the driveway to the front of the house and remained on the street. [Four photographs of Respondent and the other officers were entered into evidence as CCRBX 8].

Antoine testified that because the garage was located behind a tent at the end of the driveway, a person standing on the street would not be able to see inside the garage. Antoine described the property as enclosed on all four sides by a fence. Antoine never heard the doorbell at the front door of the house ring and did not hear anyone knocking on the front door. [Seven photographs of the front, driveway side and rear of the house were entered into evidence as CCRB Exhibits 1-7]

On cross-examination, Antoine confirmed that she and her husband generally leave the driveway gate open and that when this gate is open, there is no barrier which prevents a person from walking down the driveway toward the backyard of the house. Antoine also confirmed that there is no fence or other barrier separating the driveway from the backyard. She agreed that Respondent was polite throughout their conversation. After Antoine asserted that when she came out the back door onto her porch she saw Respondent walking toward her garage, she was confronted with a statement she made at her CCRB interview on August 3, 2012, that when she first came out and saw Respondent (the "tall one with a white shirt") he was "standing looking at my stairways leading to the kitchen." Antoine then testified that she had seen Respondent



"walking towards my garage." After Antoine asked Respondent, "Who are you?" he turned around and walked towards her and, as he stood at the back step of the porch, he asked her permission to search the garage and basement. Antoine testified that after she refused his request, she asked Respondent to leave and he and the other officers left her property.

Detective Scott Davy

The CCRB prosecutor offered in evidence a transcript of Davy's January 23, 2013 recorded interview (CCRBX 9). At this interview, Davy stated that at 0940 hours he had confirmed a Lojack hit at [REDACTED]. Respondent arrived and at 1730 hours he decided to seek consent to search from the owner. Respondent knocked on the front door. After receiving no response, Respondent, along with other officers, walked along the driveway on the side of the house to see if anyone was in the rear area of the house. The homeowner was on the phone and came out the back door of the house. After she refused Respondent's request that they be allowed to search, the officers left the property.

Respondent's Case

Respondent called Detective Ferdinand Muniz, Lieutenant Emanuel Dermitzakis, and Sergeant Atanasie Curumi as witnesses, and he testified on his own behalf.

Detective Ferdinand Muniz

Muniz testified that after Respondent knocked on the front door of [REDACTED] and received no response, a voice was heard which appeared to emanate from the side of the yard and so the officers proceeded to walk down the driveway. Muniz observed Respondent

engaging with someone who was inside the house looking out of a window and then saw Respondent meet that person at the back of the house. Muniz saw Respondent standing in the driveway next to the backyard speaking to a woman. After speaking to the woman, Respondent walked back down the driveway to the front of the house and told the officers that they would have to wait outside because she would not consent to a search. Muniz testified that it appeared to him that Respondent had continued to walk down the driveway to the rear of the house because the woman had called him to meet her at the back of the house.

On cross-examination Muniz testified that he could not see where the voice they heard was coming from when they made their way to the driveway side of the house.

Lieutenant Emanuel Dermitzakis

Dermitzakis testified that Respondent rang the front doorbell to ask the homeowner for consent to search for a stolen motorcycle. No one appeared at the front door. Dermitzakis recalled hearing a knocking sound on the window and a woman gesturing for them to go to the back of the house. Dermizakis testified that when the woman came out the back door, no one was in the backyard and no one entered the backyard other than to speak to Antoine.

On cross-examination Dermitzakis stated that he was standing in the front left corner of the driveway when he saw the woman in the window gesture to come to the back of the house.

Sergeant Atanasie Curumi

Curumi testified that as the ACD's Integrity Control Officer (ICO) he responded to [REDACTED] to insure that no illegal searches took place. Curumi testified that he saw a woman in a window, that she was on the phone, and that she then closed the blinds. He and



Respondent walked down the driveway toward the rear of the house. The woman was standing on the back porch when they got to the rear of the house. Curumi recalled that Respondent was standing in the driveway toward the back left corner of the house when he was speaking to the woman. He affirmed that none of the officers who were present engaged in any searches. After she refused to allow them to search they all walked back to the street at the front of the house.

On cross-examination Curumi could not recall who knocked on the front door.

Respondent

Respondent testified that he and Davy walked up the front steps of the house and knocked on the door. When they received no response, Respondent knocked harder on the door. They then walked down the driveway after one of the officers stated that there was someone looking out a window. After Respondent walked about halfway down the driveway, he saw Antoine looking out of a window. She motioned at him to meet her at the back of the house. There, he explained that they were looking for a stolen motorcycle and he requested her consent to search her garage. Antoine refused. Respondent wrote down his contact information and handed it to her. He then left the property. Respondent asserted that if he had stepped into the backyard, he had done so only in order to be able to speak face-to-face to Antoine who was standing on the back porch.

On cross-examination, Respondent testified that based on Davy's observation that he had seen a woman inside the house walking toward the rear of the house, and based on his own observations he walked to the rear of the house since the woman might be walking toward a back door.

FINDINGS AND ANALYSIS

Although this charge alleges that Respondent participated in entering into the "enclosed backyard" of the house, the evidence offered by the CCRB prosecutor at this trial did not establish that the backyard was entirely enclosed when Respondent arrived at the premises. On the contrary, Antoine's testimony, the photo of the driveway gate (CCRBX 2), and the testimony of the witnesses called by Respondent, all corroborate Respondent's claim that the driveway gate was open, that there was no other barrier which prevented him from walking down the driveway next to the side of the house, and that there was no fence or other barrier separating the end of the driveway from the backyard of the premises. Thus, Respondent did not enter onto Antoine's private property by opening a closed gate or by climbing over the fence which enclosed the rest of the property.

Respondent testified that the only reason he had walked all the way down the driveway and entered the backyard was because a woman looking out a window on the side of the house next to the driveway had motioned to meet her at the back of the house. This testimony has support in the testimony of Muniz, Curumi and Dermitzakis. Muniz and Dermitzakis recalled that they heard a voice emanating from the side of the house and Dermitzakis and Curumi both testified that they saw a woman looking out a window located on the side of the house next to the driveway. Dermitzakis recalled that the woman in the window appeared to him to be gesturing that they meet her at the back of the house and that this same woman came out the back door and Curumi testified that the woman in the window was on the telephone, that she pulled down the window shade, and that he soon heard a female voice emanating from the back porch.

I find it especially significant that Curumi, who was ACD's ICO and who was present to insure that no illegal searches took place, testified that he walked with Respondent down the driveway to the rear of the house.

Based on Antoine's testimony that when she first spotted Respondent after she came outside, "he was walking toward my garage," the CCRB prosecutor argued that Respondent had walked down the driveway and entered the backyard not because he was genuinely seeking to ascertain whether anyone was at home who he could speak with to obtain consent to search but, rather, "under the guise of asking for consent." This argument has no support in the record. On the contrary, Respondent's claim that he initially knocked on the front door of the house was corroborated not only by Muniz and Dermitzakis but also by Davy, whose statement regarding this incident was offered in evidence by the CCRB prosecutor (CCRBX 9 p. 8). Although Antoine testified that she did not hear a knock at the front door, since she acknowledged that she had been talking to Person A on the telephone just before she spotted the officers, she may not have heard Respondent's knock.

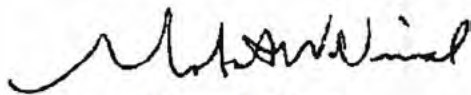
Finally, although the CCRB prosecutor argued that Respondent could have applied for and obtained a search warrant, the fact that Respondent could have engaged in a particular discretionary investigative action does not constitute proof that the action he actually engaged in constituted misconduct. Respondent had the legal right to attempt to obtain Antoine's consent to allow him to search for the motorcycle in the garage and basement of the house by requesting her permission to allow him to search. That Respondent had no intention of violating Antoine's rights under the Fourth Amendment is supported by the fact that after Antoine refused his request to be allowed to look inside her garage and her basement, Respondent did not walk over to the garage and attempt to peer into it nor did he walk around the perimeter of the house



looking for a low window through which he might be able to peer into the basement. Rather, Antoine corroborated his claim that he walked straight back down the driveway to the sidewalk in front of the house.

Respondent is found not guilty of the charge.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner – Trials

**APPROVED**

JUN 2 2015  
  
WILLIAM J. BEATON  
POLICE COMMISSIONER